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# Advice for the New Law Professor: A View from the Trenches

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# Advice for the New Law Professor: A View from the Trenches

Susan J. Becker

A decade ago, Professor Douglas Whaley published an essay that offers comfort and advice to those commencing the metamorphosis from practitioners, judicial clerks, and students into professors of law.<sup>1</sup> As Whaley points out, no particular course work or life experience is required for those of us who devote our professional lives trying to explain concepts as elusive as future interests and mens rea to students who regard Law in a Flash cards as essential resource material.<sup>2</sup>

Now that I have completed my second year of full-time teaching, I readily concur with Professor Whaley that little can be done to prepare for the sink-or-swim test which all new professors endure. Consulting seasoned colleagues, reading volumes of law review articles on legal pedagogy,<sup>3</sup> attending seminars,<sup>4</sup> and spending endless hours charting course plans and outlining class lectures provide some modicum of comfort. But none of this truly prepares you for the first time you face eighty students who expect you to demonstrate a mastery of the law in a manner that is both enlightening and entertaining.

The purpose of this article is twofold: to offer a confirmation from the trenches of many of Professor Whaley's observations<sup>5</sup> and to supplement his

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1. Douglas J. Whaley, *Teaching Law: Advice for the New Professor*, 43 Ohio St. L.J. 125 (1982). A reprint of Professor Whaley's article is provided to new law professors by Little, Brown and Company.
2. See *id.* at 125.
3. Articles on the art of teaching law which I found especially insightful include Paul G. Haskell, *Teaching Moral Analysis in Law School*, 66 Notre Dame L. Rev. 1025 (1991); Marin Roger Scordato, *The Dualist Model of Legal Teaching and Scholarship*, 40 Am. U. L. Rev. 367 (1990); Clark Byse, *Fifty Years of Legal Education*, 71 Iowa L. Rev. 1063 (1986); Michael L. Closten, *Teaching with Recent Decisions: A Survey of Past and Present Practices*, 11 Fla. St. L. Rev. 289 (1983); and Lon L. Fuller, *On Teaching Law*, 3 Stan. L. Rev. 35 (1950).
4. A Workshop for New Law Teachers is sponsored annually by the Association of American Law Schools. Topics include teaching strategies and tactics, setting goals and objectives for class meetings, building rapport and motivating students, getting started on scholarship, and preparing and grading exams.
5. I offer a voice different from that of Professor Whaley, who had more than 10 years of teaching experience when he penned his article.

suggestions with some of my own.<sup>6</sup> I do not claim to possess universal truths or to have experienced a divine revelation during my freshman and sophomore years of teaching. I simply relate my observations and experiences in an effort to ease others' struggles and perhaps elicit feedback that will help me in my own.<sup>7</sup>

### I. Deciding What to Teach

Professor Whaley counsels the new teacher to negotiate a light load of related courses.<sup>8</sup> The wisdom of that is self-evident. Preparing a twenty- or thirty-page assignment from a Contracts text is tough for a student; it borders on overwhelming for a new teacher.<sup>9</sup> To lighten the preparation time and to boost your confidence, consider selecting courses according to this order of priority: (1) substantive areas to which you had extensive exposure in law school *and* in a clerkship or practice; (2) subjects to which you had extensive exposure in law school *or* in a clerkship or practice; (3) subjects to which you have had some exposure; and (4) areas in which you have a high degree of interest but little experience.

Some will no doubt argue that one's interest, regardless of actual experience, should be the most important consideration. It is true that anyone whose academic record has opened the door to a professorship is capable of tackling virtually any substantive area of law. But there are several advantages to teaching a course in which you have something more than an intense

6. My perspective is shaped by my individual circumstances. I graduated from Cleveland-Marshall College of Law in 1983, completed a two-year clerkship with a federal appeals judge, and spent five years as a litigation associate with Jones, Day, Reavis & Pogue. I was seriously considering an offer from another law school when a visiting position became available at my alma mater. I accepted Cleveland-Marshall's offer to teach two sections (one day and one night) of Contracts for the 1990-1991 school year, and was subsequently asked to join the faculty as an assistant professor. I taught Contracts and Civil Procedure in 1991-1992, and I am teaching Civil Procedure and Pretrial Practice during 1992-1993. While there are both advantages and disadvantages to teaching at the law school where you were a student, a discussion of that issue is best left to another article.
7. Learning to teach is only one of the many challenges facing the novice professor. You should also be braced to handle other aspects of the job, such as law school committee assignments, pro bono and community service, and legal scholarship. Although nonteaching activities make serious demands on your time, they cannot be ignored, since they will almost surely be scrutinized as part of the tenure decision. The sole advice I offer in this respect is to learn effective time and resource management, which on occasion means just saying No.
8. Whaley, *supra* note 1, at 126.
9. My initial obsession to consult every law review article, note, and treatise on a given topic quickly abated as I became overwhelmed by the volume of material written on even relatively straightforward concepts. While articles on the moral and metaphysical underpinnings of the mailbox doctrine undoubtedly provide a new perspective on the subject, they also demand a serious commitment of brain cells. After comparing the treatment of the same topics in different treatises, I selected one hornbook as my primary reference. Limiting my universe to the cases and problems assigned from the textbook and my hornbook *qua* Bible proved a more than adequate method of preparation; the hornbook provided interesting (and relevant) historical background for the more concrete doctrines and led me by the hand through the intricacies of the more abstract principles. I do admit, however, to sneaking a peek at a Nutshell once or twice during the year.

intellectual interest. The prime advantage is the ready availability of war stories.<sup>10</sup>

Judicious use of war stories to develop abstract legal principles into a real-world snapshot is valuable in at least two ways. First, it adds a practical dimension to the educational experience. Second, it boosts the instructor's credibility—a benefit not to be taken lightly, since students are much more likely to doubt, and therefore to challenge, a novice professor.<sup>11</sup>

The key to credibility is demonstrating that you know what you are talking about. What better demonstration is there than to say "I've been there, and this is how it works"? But use of war stories requires striking a balance between providing a pragmatic view of the law and presenting a picture that causes students to become jaded or even cynical about their mostly theoretical legal education and about our system of justice.<sup>12</sup>

Another cardinal benefit of teaching a familiar subject is that it substantially reduces your fear that a smoking gun may lie buried in the yet uncovered materials, a gun that will blast into oblivion most of the legal principles studied to date.

You may, of course, be spared the agony of the course selection process: the Dean may ask you to teach Iberian labor law. Such matches of teacher to course are made by balancing the newest faculty member's interests and background against the following considerations: (1) the course you are offered is one of the Dean's favorite subjects, and (2) no one else wants to teach it. Unless you do not plan a long career in teaching, or you become physically ill at the thought of preparing for the particular course (as I do, for example, at the notion of working through the future interests section of Property), a gracious acceptance of the Dean's proposal is probably in your best interest. And since it is not unusual to explore a number of subject areas before finding the right teaching niche, you are not wedded to that subject forever.<sup>13</sup>

## II. Learning How to Teach

### A. Creating a Professorial Personality

A body of faculty folklore develops over the course of a law school's history. Stories of amusing, traumatic, or otherwise memorable classroom incidents

10. I agree with Professor Whaley "that legal points made in the course of such stories stay with students and are well remembered after much else is forgotten." Whaley, *supra* note 1, at 135.

11. This observation comes from sitting in on classes taught by well-respected, established professors; discussions with other new teachers; and dialogues with students who endured my first year of teaching.

12. This is not to suggest that students should be insulated from the many inequities in our system or the discrepancies between theory and practice. But the goal should be to encourage them to recognize and work to correct these problems rather than to reject law as a career even before they have finished law school.

13. My primary interest is practice-oriented courses (Evidence, Civil Procedure, Pretrial Practice, Remedies, and the like), but the visiting position I accepted was available because of the last-minute departure of a Contracts teacher. Although I am now moving into my first-choice courses, I enjoyed teaching Contracts and hope to teach it again.

are swirled into an oral history that is embellished, revised, and updated as it is handed down from generation to generation of law students. This accretion of tribal memory produces a professor's reputation (not to mention an occasional nickname), which in turn directly affects that teacher's ability to attract students and to communicate knowledge to them once they are lured. In contrast, the new professor is a blank page in the institutional history. This situation presents a challenge to the students as well as a unique, if not sobering, opportunity for a novice teacher to begin constructing a reputation.<sup>14</sup>

One trap for the unwary is the ego-inflating effect of being addressed as "Professor." Professor Whaley wisely counsels you to refrain from embarking on a first-class ego trip; instead, just be yourself.<sup>15</sup> But be warned that there is a danger in injecting too much of the real you into the classroom, in revealing your sense of humor or cynicism, in digressing to relate personal (as opposed to professional) experiences, and in demonstrating such emotions as frustration or even anger. Excessive personality leakage erodes the barrier separating professor and student. While I hardly advocate a strict Kingsfieldian approach,<sup>16</sup> I do believe that a certain amount of distance is necessary to maintain the right atmosphere in the classroom. I distinctly remember one Contracts class I taught which, had it been videotaped, might have won an award as a stand-up-comedy special. No doubt everyone enjoyed the class, and it broke some of the tension and tedium of the first-year grind. But I now believe that the hilarity also conveyed the unintended and inappropriate message that the material was not worth serious consideration.

The selection of an appropriate persona is of course a very personal choice. Only you can decide where you fit along the scale from Attila the Hun to Mother Teresa. Are you more effective as an aloof and distant disciplinarian? As a caring, accessible person eager to serve as mentor/friend to students? Somewhere between the two? The worst choice, in my view, is inconsistency—warm and fuzzy one day, cold and demanding the next. Such schizophrenic behavior will leave both you and your students with a feeling of uncertainty and imbalance.

### *B. Choosing Course Material*

Unless you are teaching a highly specialized subject (e.g., Iberian labor law), you will be astounded at the abundance of course materials available for law school instruction. Publishers are more than eager to provide complimentary copies of everything they offer on a given subject. While their generosity may at first seem a blessing, it soon becomes a curse when fourteen crates of textbooks, teaching manuals, workbooks, and study guides show up on your doorstep. If you work through this tonnage, you discover that many texts cover

14. I do not mean to imply that popularity is a valid measure of effective teaching. But the best teachers are those who establish their credibility by demonstrating both a mastery of their subject matter and personal characteristics worthy of emulation.

15. Whaley, *supra* note 1, at 131-32.

16. Whaley also rejects the "grind 'em to a pulp" style of teaching. *Id.* at 132.

the same basic topics, often presenting them in the same general order and using the same key cases.

You can save a lot of time—and avoid serious back injury—by limiting your search to the most popular three or four texts on the subject. In fact, Professor Whaley recommends a further short cut: simply choose the most popular text in the field.<sup>17</sup> Publishers will readily provide circulation figures on a given book, and will also identify teachers who have regularly used the text. An inquiry as to whether the current edition will soon be superseded by a revised version is also prudent. And soliciting the opinion of colleagues who teach the subject at your own institution is wise from both a practical and a political point of view.

There are two other guidelines to textbook selection. First, avoid any text that poses questions too complex or esoteric for you to answer. Second, try to select a text that includes problems; they are extremely helpful in promoting class discussion and aiding the students' development of analytical skills.<sup>18</sup>

Since most law books contain very little textual discussion, students will inevitably ask you to recommend outside reading.<sup>19</sup> Even if you swear on Justice Holmes's headstone that multi-volume sets such as Corbin on Contracts or Wright & Miller on Civil Procedure are the only sources worth consulting, at least ninety percent will reject your recommendation in favor of commercial study guides. So it is not a bad idea to undertake your own review of these guides, and at least advise students which ones to avoid.

### *C. Preparing the Syllabus*

I heartily agree with Professor Whaley that a threshold determination of the amount of material you plan to cover is critical to effective teaching,<sup>20</sup> but experienced teachers hold differing views on setting goals. One commonly espoused theory advocates quality over quantity: you may cover fewer topics, but the pace allows attention to detail and the subtle nuances of the law. The downside is that your students will eventually have to explore the omitted topics on their own, when preparing for the bar exam or actually representing a client.<sup>21</sup> The other model advocates coverage of the entire textbook.<sup>22</sup> This approach arguably increases the students' ability to spot issues, on exams and

17. See *id.* at 129. It is ironic that, had I read Whaley's article first, I might not have chosen his text. And, in fact, it was a good choice. See Thomas D. Crandall & Douglas J. Whaley, *Cases, Problems and Materials on Contracts* (Boston, 1987).

18. If you ask, publishers will send you a copy of your selected text in a convenient loose-leaf format.

19. Some students, of course, pose this question only to make you think they are doing outside reading. Even so, it is best to have an answer prepared.

20. Whaley, *supra* note 1, at 127-28.

21. Professor Whaley's Trusts teacher covered only 130 pages of an 800-page textbook. *Id.* at 127.

22. This brings to mind my experience with a Torts teacher who asked on the last day of class, "Okay, any questions on the last 300 pages of the text?" Although he claimed that we would be responsible for all that material on the final exam, I managed to survive the course as well as the bar exam, two years as a judicial clerk, and five years as a litigator without ever reading it.

in real life, but it may leave them without the analytical skills necessary to resolve those issues competently.

Whichever pedagogical theory you embrace, you may find it quite difficult to translate your goals into a course syllabus. I spent endless hours poring over my chosen Contracts text, reordering the presentation of material and deciding how many classes should be devoted to Consideration as opposed to Third Party Beneficiaries or Assignments of Rights/Delegation of Duties. From this painstaking process, I thought I had produced the definitive syllabus: realistic yet ambitious, formalistic yet flexible. By the end of the third week of classes, we were almost three weeks behind the syllabus.<sup>23</sup>

Be warned that failure to keep up with your syllabus has a number of repercussions. Students overwhelmed by the amorphousness of legal discourse cling to the syllabus as a drowning man clings to a scrap of wood in a storm-tossed sea. Those who merely keep pace with the material covered in class harbor the suspicion that you will either assign the last half of the text for the final day or, even worse, that you will make no attempt to review the material in class but will nonetheless put it on the final exam. The more obsessive students will keep up with the syllabus, and will have forgotten about the material completely by the time you finally cover it.<sup>24</sup>

The gravamen of the problem is that the novice professor has no frame of reference for judging the amount of class time that a particular topic, case, or problem will require. The solution that I arrived at is a series of syllabi: each syllabus delineates a particular topic or topics to be covered and lists the cases and problems assigned, but there are no specific class dates tied to the assignments.

The multi-syllabus system has several advantages. First, it provides flexibility for the teacher. Since the assignments are not tied to specific dates, you can move through the material at a comfortable pace without constantly feeling the pressure of an arbitrary timetable that you created without really knowing how easy or how difficult it would be to cover each topic.<sup>25</sup> Second, the

23. Part of the problem, of course, is that every case presents the opportunity to discuss so much besides the highlighted issue: procedural intricacies, tactics employed by the respective attorneys, related areas of law which guided the court's decision, historical development of the principles at issue, and public policy concerns. It is often difficult for a novice teacher to determine which paths to take, and how far to follow them—especially in a class of first-year students, who have so much to learn.

24. When time limitations prevent the new teacher from keeping up with an overly ambitious syllabus, these obsessive students will often pose embarrassing questions about cases that the teacher originally assigned for that date but has not yet read. An effective way to limit the credibility damage is simply to say, "I'd prefer to focus on the materials we're covering now and discuss that case when we get to it."

25. I was amazed, for example, that my students breezed through contract formation (offer, acceptance, and consideration) but seemed to develop a collective mental block in analyzing contract damages. Since I taught the same course twice in one day, first to a class of 85 day students and then to 60 evening students, I also noted that a different collective personality affected the pace of the material covered in each class. In general, the night students—most of whom attended school after a full workday—were less well prepared but more willing to engage in discussions regarding the policy and practical aspects of the law. That meant that we covered slightly less material in the night class. Another reason for the difference in pace may have been that I was more relaxed during the evening class, since it was my second time through the material.



students don't imagine themselves being somehow cheated because you have failed to cover every topic listed on an overly ambitious syllabus. Third, the flexible approach makes the students exercise judgment about how far ahead they should prepare.<sup>26</sup> If they ask, I try to "guesstimate" the amount of material we will cover in the next class, but I advise them that reliance on my misestimation is no excuse for lack of preparation. Finally, the format of the topic-driven (rather than date-driven) syllabus aids the students in preparing their course outlines.

#### *D. The First Class*

Since a new faculty member starts at zero on the credibility meter,<sup>27</sup> the first impression is critical. Being absolutely terrified at the thought of facing eighty-five students in a classroom—a room which was, by the way, a steeply banked amphitheater perhaps better designed for a lions-versus-Christians encounter—I thought it imperative to mask the tremor in my voice and the shaking of my knees by demonstrating that I was in charge. The strategy I devised was to hide behind a multi-page tome of a handout which detailed my goals and my expectations of THEM regarding class preparation, attendance, and performance on exams. I initially believed the handout to be a stroke of genius: as we worked through it line by line, I survived the premier class without voice cracking or knees buckling. I found out much later that the true impact of my presentation was to transfer my own insecurity and near terror to the students, who, after that first class, collectively pegged me at the Attila end of the scale.

I remain convinced, though, that it is important, especially for the novice teacher, to articulate clearly—preferably in writing—what is expected of the class. When presented in the proper tone, your expectations about class attendance, preparation, and even the length and format of midterm and final exams are a source of comfort for the students. Explaining the reasons for the class requirements, rather than presenting them like the Ten Commandments chiseled in stone, also conveys the message that your ultimate goal, which requires the students' cooperation, is to create an atmosphere conducive to learning. I began the first classes of my second year of teaching with an overview of the legal system and a short lecture on how to brief a case. My handout on class procedure was one page long.

#### *E. Close Encounters of the Student Kind*

A number of situations will arise that will test the appropriateness of your chosen professorial persona and may even lead to modification of same.

26. Good judgment is critical to good lawyering. Although I readily admit that teaching good judgment is almost as impossible as teaching common sense, I also believe that requiring students to exercise their judgment skills while in law school is a step in the right direction.
27. You're actually lucky if you start at zero. I found out late in my first semester that a number of rumors had been circulating about me before my first class, none of which was true or particularly flattering. One of my personal favorites is that I had been asked to leave the law firm because I hadn't billed enough hours. I guess the students assumed the bags under my eyes came from watching David Letterman every night. But there's really no way, rumors being what they are, to correct or dispel them. The best you can do is work to project an image that will make the rumors seem inherently suspect.

These situations also require you to reveal something about your personal and professional underpinnings, thus adding to (or detracting from) your reputation. Contemplating your reactions to the common scenarios set forth below may help you avoid awkward moments both inside the classroom and out.

1. "But Professor, What Is the Black Letter Law We Are Supposed to Learn from the Last Three Cases?"<sup>28</sup>

For most students, any previous problem solving in their educational experience produced exact results. Those schooled in math, chemistry, or accounting were trained to choose one correct formula which would yield one correct answer. Even in more fluid disciplines like literature, history, or psychology, students generally prepared for exams by memorizing a "correct" answer set forth in the textbook or provided by the instructor.<sup>29</sup> It is not surprising, then, that law teachers often encounter resistance, if not outright resentment, when they attempt to realign students' thought processes to consider a variety of approaches to the same set of facts, especially since none of the approaches produces a completely predictable result.

The resistance movement often surfaces when you assign two factually similar cases resolved under different legal frameworks yielding opposite results. In fact, students have been known to sigh collectively in exasperation when the teacher declines to answer a question like "So which decision is right?" Instead of appreciating the effort to encourage their development of much-needed analytical skills, students often, unfortunately, view such unwillingness to dictate a single analytical approach as part of a larger law school conspiracy to make learning more difficult.

There are several ways to deal with students' resistance to inexact resolutions of legal dilemmas. You can simply ignore the grumbling and sighing and hope that your students will eventually see the light. The downside to such an approach is that it may breed more frustration, or outright hostility. One way of lessening the students' frustration is to emphasize, in the first lecture and at intervals throughout the semester, that good lawyering requires the ability to see in shades of gray, not just black and white.<sup>30</sup> Another is to require students to identify both parties' arguments, the court's reaction to each point and counterpoint made by the parties, and the stated or implicit policies which

28. This question was posed by a first-year Contracts student at the conclusion of a 75-minute class during which I repeatedly emphasized the importance of the precise analytical framework employed, policy considerations at stake, and equitable concerns which drove three courts to arrive at three distinct resolutions in similar cases.

29. The severity of the one-right-answer problem became painfully apparent when I provided my Contracts students with a sample midterm exam with a complex damage problem. Before I distributed the take-home exam, I emphasized that the proper approach required a comprehensive written analysis of the various theories of damages (expectation, reliance, and restitution), selection of the most appropriate measure of damages, application of that measure to the facts, and reference to related principles (certainty, foreseeability, mitigation, and the like). My confidence in my ability to teach exam-taking skills plummeted when one of the students stopped by my office and asked: "Is the answer \$15,000?"

30. I admit that my own frustration has tempted me on more than one occasion to quip: "If you're looking for black and white, take in an Ansel Adams retrospective."

guided the court in its decision-making process. Creating hypotheticals during class serves much the same purpose, but the development of clear, appropriate hypotheticals is no simple task; reliance on problems and questions contained in the assigned materials eases the burden considerably. Compelling the students to stand in each party's shoes and then assessing the arguments from the court's perspective gradually weans them from the one-right-answer approach.

## 2. Amy Vanderbilt Addresses Student Behavior

For those who come to the teaching profession with the assumption that graduate-level students will observe certain conventions of classroom decorum and will know the appropriate boundaries of the student/professor relationship, the first few months of classes provide a rude awakening—and I do mean rude. In my brief career, I have faced students who repeatedly arrived ten minutes late for class (usually with steaming cup of coffee in hand); talked audibly while I or a fellow student had the floor; raised their hands in a Pavlovian response every time a question or comment danced into their heads; continued to wave the raised hand like a first-grader in need of a bathroom pass until I called on them; yawned as if they had never been so bored in their entire lives; asked questions that had been asked and answered at least twice in the previous five minutes; coughed so loudly during class that I could not speak over the noise; fell asleep (sitting straight up, no less); exhibited the dreaded “So what are you going to do about it?” sneer while informing me that they weren't prepared to discuss the assigned material; and even passed a case brief to a student I had called on who obviously hadn't read the assignment.

At the risk of sounding like someone who takes Miss Manners a bit too seriously, I admit that I find these situations disturbing. The momentary disruption of the class is a relatively minor problem that can be overlooked. The more important issue is the challenge to the teacher implicitly issued by such behavior, and the corresponding message conveyed to the students by the teacher's response, or lack thereof.

Since an ounce of prevention is always worth at least a pound of cure, you can outline for students during the first class meeting the type of behavior that will and will not be tolerated. You can present this in a nonthreatening and perhaps even humorous manner. At a minimum, you put the students on notice that you have certain boundaries that are best not crossed.

If you decide not to make such a declaration, or if your declaration is ignored, a wide variety of responses is available if unacceptable behavior occurs. These range from outright confrontation to ignoring the disruption altogether. The most direct approach is to excuse the student from the remainder of the class.<sup>31</sup> A less extreme but equally effective tactic is to comment on the behavior: for example, turning to the student yawning like a

31. In deference to due process considerations, this sanction is best limited to situations where students were put on notice of this possibility during the first class, preferably by both an oral announcement and a written handout.

bear awakening from a six-month hibernation and saying, "I'm sorry if we're boring you; I'll try to move on to something more exciting as soon as possible." When the offending student blushes and the rest of the class giggles nervously, you know you've made the point that such behavior is not appreciated in your classroom. Another good, and less confrontational, approach is to interrupt your discussion with a short lecture on the value of getting enough sleep while in law school.<sup>32</sup> Finally, you can catch the offender after class and communicate your displeasure privately.

Admittedly, the way you handle any particular instance will depend not only on your advance plan, but on your own level of tolerance that particular day.

### 3. Yes, Virginia, There Is a Stupid Question

A subject often debated by law faculty is whether there is such a thing as a stupid question from a law student. Those arguing against the existence of such a phenomenon say that the amorphous and constantly evolving nature of the law saves any and all questions uttered by law students from being classified as stupid.<sup>33</sup> The other school of thought is that law students have a virtually unlimited capacity for asking questions which highlight their ineptitude for legal analysis as well as their ignorance of their ineptitude.<sup>34</sup> Although my personal opinion on this issue might be inferred from the title of this section, I decline the opportunity to adopt formally, and thus be required to defend, either position.

But I do warn the beginning teacher that you will inevitably be asked at least one question per class which could reflect either (1) a dismal misunderstanding of every fundamental principle covered to date in the course or (2) a sophisticated, thoughtful effort to find a commonality between seemingly unrelated concepts. Your ability to classify—while appearing perfectly at ease—an inquiry which initially makes no sense to you depends on your ability to think on your feet, or to stall in a manner which makes it appear that you can think on your feet.<sup>35</sup> The most effective tool I have found for handling the

32. The kind-but-firm-advice method is especially effective when you've called on several students seriatim who are obviously unprepared. The "You really can't expect to get anything out of class if you haven't read the material" speech is always a good one to have up your sleeve.

33. Some teachers (especially those who have never heard that puns represent the lowest form of humor) duck the issue by stating that "the only truly dumb question is the one that remains unuttered."

34. My colleague Frederic P. White may have been converted to this view after the following exchange occurred during a review session for his Property class:

Student: What time does the midterm exam start?

Professor White: It starts at nine and lasts three hours.

Student: And what time does it end?

A teacher's only hope in such a situation is that the student is better at legal analysis than at math.

35. After you have met with a particular class for several weeks, you develop a fairly accurate sense of which students will make a meaningful contribution to the class discussion and which will offer a stream-of-consciousness comment/question/diatribe.

could-be-valid/could-be-stupid dichotomy is to respond with a question of my own, such as "What led you to ask that question?" or "How do you think the situation could have been analyzed?"<sup>36</sup> In addition to buying time, you may get a further explanation—or inability to articulate one—that will resolve the stupid/valid uncertainty. In any event, it is wise to treat every student inquiry with respect, since the question that at first blush seems inane may, upon further reflection, become the inspiration for your next law review article.

#### *F. To Review or Not to Review, That Is the Question*

Law professors repeatedly pontificate that mastery of law requires much more than mere memorizing of black letter law: one must develop razor-sharp analytical skills. But our efforts to teach these skills often just leave hypotheticals and unanswered questions ringing in students' ears as they leave the classroom. This inevitably results in the students' relying on commercial outlines which rarely address the relative value of the various concepts covered in the course, and which provide little or no guidance on the interrelationship of important principles.

A structured end-of-term review can be a valuable tool for developing students' ability actually to apply the black letter law they've committed to memory. The review places the general concepts in perspective and provides the students with a framework into which they can weave the many exceptions and nuances to the general rules. An additional benefit is that a review makes grading exams a much more satisfying experience.

A review format I found particularly effective is "How to Approach a Contracts [or Criminal Law or Civil Procedure or Property] Problem."<sup>37</sup> This requires organizing the course material in a series of questions that students should ask themselves when confronted with a fact pattern on an exam. In Contracts, for example, questions asked seriatim could include: (1) Does the subject matter of the transaction invoke common law or UCC analysis? (2) Are there any policy or other factors which may influence the court's decision? (3) Can the plaintiff establish that offer, acceptance, and consideration are present and that all conditions for performance have been met? (4) If so, was the breach material? (5) What, if any, defenses are arguably available to defendants? (6) If unsuccessful on the breach of contract claim, is there another theory on which the plaintiff might recover? (7) What are the damages which plaintiff might seek under the chosen theory of recovery? And so forth.<sup>38</sup>

36. When my ability to comprehend a student's inquiry fails completely, I have even asked another student to respond to the first student's question. This not only serves the stall objective but also provides some indication as to whether other students view the question as valid or stupid.

37. Professor James G. Wilson introduced me to this format when I was a student in his Administrative Law class many years ago. The series-of-questions approach proved quite useful in my other classes and in my clerkship.

38. While such a framework may seem obvious, students often get so buried in the subtleties of various legal principles that they are unable to see the broader picture or relationships among concepts. This is especially true of first-year students.

*G. Preparing and Grading Exams*

Grading is the worst part of teaching.<sup>39</sup> As you mine the mountain of bluebooks atop your desk, you repeatedly unearth basic legal principles, which you thought you explained with crystal clarity, twisted and tortured almost beyond recognition. You find unrelated concepts woven together, producing exam answers that defy both legal logic and common sense. Major issues have been overlooked. You are a failure.

If misery loves company, you will not be lonely during exam-grading season. Even your most senior colleagues will be seen wandering about the law school, muttering about the possibility of changing careers. No one seems to have a cure for this trauma, although there are a few preventive measures worth considering.

First, when drafting your exam, remember that you are trying to produce a fair test of the students' knowledge, not an entry for a creative writing competition.<sup>40</sup> Avoid the use of cutesy-pie names for your characters, complex fact patterns, puns, double entendres, red herrings, and other devices that add unnecessary complication. Take at face value this dictum of a professor with more than twenty years of exam-grading experience: you can never make an exam too simple.<sup>41</sup>

Second, have a colleague who teaches in the same or a related area review the exam. Solicit comments not only as to content, but also as to form. Is the fact pattern too long or too short? Did the names of the parties get switched at any place? Are there typos, grammatical mistakes, or hanging modifiers that create ambiguities? Is the fact pattern inadvertently sexist, racist, classist, or homophobic? You'll be surprised how many defects a fresh pair of eyes will spot in the "perfect" exam you've crafted.

Third, prepare a grading sheet to give to the students when you return their exams, identifying the key issues and sub-issues and providing a brief explanation of the resolution of each. Leave spaces for individual comments. To add an objective element to the otherwise subjective grading process, consider assigning a certain number of points to each issue and recording on the grading sheet the points the student received for addressing each issue.<sup>42</sup> Since students sometimes raise valid issues that we did not intend for them to address, a few of the total points may be set aside for an other-issues-raised category.

39. For a supposedly fictionalized account of grading which bears a striking resemblance to reality, see Ronald B. Lansing, *The Agonies of Exam Grading*, 23 Rutgers L.J. 107 (1991).

40. In addition to creating your own hypotheticals, opinions recently published in U.S. Law Week or state or local court advance sheets provide a good source of fact patterns for exams.

41. Professor Joan Baker shared this insight with me. Similarly, Whaley opines that "a new teacher's first exam is always too difficult." Whaley, *supra* note 1, at 137. Unfortunately, I did not take this advice to heart until the second round of exams I wrote.

42. My Contracts midterm, for example, consisted of one hypothetical. Of the 45 total points possible, 15 were available for discussing offer, acceptance, and consideration; 15 for unraveling a classic "battle of the forms" scenario; and 10 for spotting and resolving a promissory estoppel matter. I reserved 5 points to be awarded at my discretion for additional issues raised.

Finally, think of the examination process as a learning experience for both you and the students. Midterms are an especially effective vehicle for providing feedback. Consider reserving the first class period after the midterm to discuss the correct approach to the exam and the errors most commonly committed.<sup>43</sup> In any event, a number of students will probably request individual appointments to review their exams with you.<sup>44</sup> I have found that such sessions not only serve to increase the students' understanding of the legal analytical process, but also give me valuable information about my teaching and my exam writing.

Students' motivations for seeking a private exam-review vary greatly. In my experience, the vast majority use these sessions for the intended purpose: an opportunity to identify weaknesses in their knowledge of substantive law and exam-taking techniques. A few others schedule a conference for political purposes.<sup>45</sup> Still others perceive it as a chance to make an oral argument for a higher grade.

Unless the exam answer at issue is absolutely dismal, you may find yourself second-guessing your grading process as the student sits in front of you, reviewing each line and explaining what she really meant in her answer. Don't. Keep in mind that grades are (and should be) based on the student's ability to communicate knowledge in writing. Furthermore, exams are (and should be) graded in relationship to each other. In short, an exam should not be reassessed when viewed in isolation and accompanied by an oral presentation.

An argumentative student may put you on the defensive by insisting that you explain your grading process in detail and justify specific points awarded on various parts of the exam. But you can preempt inappropriate point-by-point debate by stating at the outset that, absent a calculation error in the point total, you will not change the grade on this particular exam, but will offer advice on improving performance on future exams. A student's refusal to accept these ground rules is good reason for terminating the conference.

The most difficult sessions, however, are not those involving even the most quarrelsome oral advocates; rather, the most draining are those which dash the student's dreams. Students who made nothing but A as undergraduates are stunned when their best efforts rate only C in law school. Even worse, students who have had law as their career goal since pre-school are devastated when the grade is D or F.<sup>46</sup>

43. If you do not think this an appropriate use of class time, consider offering an "optional" class to discuss the exam. You will find students very appreciative of your efforts, and fewer students may request individual appointments with you to review their exams.

44. The half hour used by Whaley, *supra* note 1, at 140, is probably the minimum amount of time needed for a thorough review of a student's exam, so the time (and energy) commitment required to provide individual sessions for all members of a class should not be underestimated.

45. In law school vernacular, to "suck up to the professor."

46. I have received passionate pleas from students' family members urging me to reconsider grades. I respond by clearly stating my position that it is inappropriate for me to discuss the subject with anyone other than the student. But it's difficult to throw someone out of your office when he's got tears in his eyes.

The easiest response is to bandage the walking wounded with a canned "I know you can do it" pep talk. A kinder though much more difficult approach is to be honest. If you truly believe the student will never do better than C work and her aspiration to make partner at a major law firm is hopeless, let her know. If you think the student who bombed your exam will eventually flunk out of law school or, even worse, struggle through law school but never conquer a bar exam, paint a realistic picture of what lies ahead. Remember that students value your opinion. Return that respect by providing them with honest advice and information.<sup>47</sup>

### III. Student Contact Outside the Classroom

If your chosen approach to teaching includes making yourself available to students outside the classroom for more than just exam review, be advised that limiting your contact with students may be necessary as a matter of basic survival. I espoused an open-door policy during my first year, encouraging students to stop by my office when they had a question or a comment about the class.<sup>48</sup> I apparently failed to delineate the appropriate content of such communications, since I faced a steady stream of students seeking advice on personal and legal problems, course selection, career planning, and how to succeed in other classes. I deflected many of the questions by referring the student to someone more qualified to deal with such things, such as the campus counseling center or the law school placement office.<sup>49</sup> Others were more difficult to field, especially when the student appeared on my doorstep on the verge of hysteria, proclaiming that all other avenues had been exhausted and I was the last remaining hope.<sup>50</sup>

The above scenario can be avoided altogether by selection of an aloof professorial persona. But total detachment seems to me unnecessarily harsh. You can reach a satisfactory middle ground by reserving set office hours each week for your students. In announcing your availability, tell the students what they may and may not expect of you. Tell them, or better yet put it in writing, that you will NOT provide legal or personal advice and will not serve as a tutor. One of my stated limitations, for example, is that I will entertain questions only on material we have already covered in class and only when the student has already consulted the hornbook I recommend for the course. I also

47. Two articles I recommend to students struggling with law school are John Nivala, *Zen and the Art of Becoming (and Being) a Lawyer*, 15 U. Puget Sound L. Rev. 387 (1992), and Joel Jay Finer, *Finding Yourself in Law School*, 37 Clev. St. L. Rev. 585 (1989).

48. This is indeed a two-way street. During these sessions students often offered comments about the class which provided helpful feedback and which, in more than one instance, caused me to reconsider my approach to specific material.

49. I strongly urge you to explore the various resources available to students at your law school and to keep a list of the appropriate contact persons and phone numbers handy.

50. For example, several students sought my advice on how to deal with obnoxious roommates, one student asked my help in preventing his grandfather's eviction from an apartment, and another asked about defenses to a paternity action. (I didn't inquire why he wanted to know.)



require narrowly drawn inquiries and warn students not to approach me with questions like "Could you explain this liquidated damages concept again?"<sup>51</sup>

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No matter how much time and energy and care you devote to planning your courses and structuring an effective professorial persona, there will be days when all of your ideas fall far short of your desired objectives. The student who wasn't prepared last class isn't prepared again today; your students stare at you like deer caught in the headlights when you ask them to compare a case under discussion with one covered half an hour ago; the exams you're grading unequivocally demonstrate that ninety-five percent of your class interpreted a minor exception to a legal principle as the general rule. Take this advice, given me by a friend: just "finish each day and be done with it."<sup>52</sup> As you will undoubtedly tell your students, there is no substitute for experience. The only way to learn to teach is by teaching. As you collect a few notches on your belt, you will shed the cloak of insecurity which threatened to trip you the first time you walked into a classroom and headed for the podium instead of the back row. And in a very short time, you will learn the most valuable lesson of all: this is the best job in the world. Good luck.

51. As my second semester of my second year was drawing to a close, a Contracts student reported that she and a number of other students were confused about third-party beneficiaries and asked if I would schedule an extra class to review that topic. I declined to do so because every student (or group of students) has at least one area in which an extra class would be helpful; I feared setting a precedent that, carried to its logical extreme, would require me to reteach the entire course via "optional" year-end classes. I reiterated, however, that I would be willing to schedule an office appointment to answer narrowly tailored questions on the subject.
52. Here is the full text that she gave me: "Finish each day and be done with it. You have done what you could. Some blunders and absurdities no doubt crept in. Forget about them as soon as possible. Tomorrow is a new day; you shall begin it serenely and well." My friend attributed that to Ralph Waldo Emerson, but I have been unable to locate the words in Emerson's vast body of work.